

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

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Assessment and Collection
of Regulatory Fees for
Fiscal Year 1997

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MD Docket No. 96-186


To: The Commission

PETITION FOR PARTIAL RECONSIDERATION
BY THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

By:


Jill Lyon, Director of Regulatory Relations
1150 18th Street, N.W., Suite 250
Washington, D.C. 20036
(202) 331-7773

Of Counsel:

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace & Gutierrez
1111 Nineteenth Street, N.W. - 12th Floor
Washington, D.C. 20036
(202) 857-3500

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August 11, 1997

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), pursuant to Section 1.429 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully requests the Commission to partially reconsider its decision in its Report and Order in connection with the assessment and collection of Regulatory Fees for Fiscal Year ("FY") 1997.¹ Specifically, AMTA asks the Commission to reconsider its requirement that Specialized Mobile Radio systems ("SMRs") classified as Commercial Mobile Radio Services ("CMRS") submit "standard" regulatory fees for all units operating on the system(s) without regard to whether such units are interconnected.

I. Introduction

1. AMTA is a nationwide, non-profit association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz Specialized Mobile Radio ("SMR") service operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz band.

2. The Association's members had been classified as private carriers prior to the 1993 amendments to the Communications Act.² Pursuant to the Budget Act, the regulatory distinction between private and common carriage was replaced by a CMRS versus Private Mobile Radio Service ("PMRS") analysis. Private carrier systems considered to meet the CMRS definition of providing interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public, were reclassified as CMRS licensees. However, the Budget Act also provided a three-year transition

¹ Report and Order, MD Docket No. 96-186, 12 FCC Rcd ____ (1997) ("FY 1997 Report and Order").

² Omnibus Budget Reconciliation Act of 1993, Pub.L.No. 103-66, Title VI § 6002(b), 107 Stat. 312, 392 ("Budget Act").

period pursuant to which private carrier licensees authorized prior to August 10, 1993 would continue to be regulated a private carriers, not CMRS, until August 10, 1996.³ Only those qualified private carriers whose initial licenses in a service were issued after the August 10, 1993 deadline were treated as CMRS prior to the expiration of the three-year transition period. AMTA's participation in the FY 1997 regulatory fee proceeding related to issues raised by the transition from private carrier to CMRS status.⁴

II. Discussion

3. In its comments to the FY 1997 NPRM,⁵ AMTA urged the Commission to reexamine its decision in the FY 1996 Report and Order,⁶ in which the FCC required CMRS SMR providers to pay regulatory fees based on all units in operation on a system rather than those units that were interconnected. The Commission failed to address this issue in the FY 1997 Report and Order, contrary to the Administrative Procedure Act⁷ and Section 1.425 of the Commission's rules.⁸ AMTA, therefore, asks that the Commission reconsider the portion of its decision pertaining to the category of units on which SMR licensees' regulatory fees will be based.

³ 47 U.S.C. § 332(c)(6).

⁴ See, Comments of AMTA dated March 25, 1997.

⁵ Notice of Proposed Rule Making, MD Docket No. 96-186, 12 FCC Rcd ____ (1997) ("FY 1997 NPRM").

⁶ Report and Order, MD Docket No. 96-84, 61 FR 36629 (July 12, 1996) ("FY 1996 Report and Order").

⁷ 5 U.S.C. §553(c).

⁸ 47 C.F.R. § 1.425.

4. AMTA contends that the Commission has in fact looked to the particular use that a provider makes of its frequencies to assess regulatory fees. In the FY 1996 Report and Order, in which it rejected basing SMR regulatory fees on a distinction between interconnected and non-interconnected units because the regulatory fee was based upon a mobile provider's regulatory costs rather than the particular use that the provider makes of its frequencies.⁹ For example, for purposes of regulatory fees, the Commission has treated regulatory fee payments by those SMRs which are not authorized to provide interconnected service as "small" fees subject to advance payment consistent with requirements of Section 9(f)(2).¹⁰ Conversely, the regulatory fee payments by those SMR licensees authorized to provide interconnected service are treated as "standard" fees, payable in full on an annual basis.¹¹ The Commission's treatment of licensees, therefore, contradicts its contention.

5. Moreover, in the FY 1997 Report and Order, the Commission consolidated the regulatory fees of the microwave licensees which are regulated as "private" (paying "small" regulatory fees) and those regulated as common carriers (previously paying "standard" regulatory fees).¹² The Commission determined that the operational and technical characteristics of private microwave and commercial microwave services were similar and that regulation of each service was essentially the same.¹³ The Commission consolidated the regulatory fees into a single

⁹ FY 1996 Report and Order at ¶ 19.

¹⁰ FY 1997 Report and Order at ¶ 85.

¹¹ Id. at ¶ 61.

¹² Id. at ¶¶ 44 - 46.

¹³ Id. at ¶ 46.

category - "small" regulatory fees. Thus, the Commission already has determined that the operational characteristics of a system are determinative in calculating regulatory fees.

6. AMTA submits that the technical and operational characteristics of SMR systems, regardless of regulatory status, are the same. SMR licensees are governed by Subpart S of Part 90 of the FCC's rules¹⁴ without distinction as to the provision of interconnect service. Further, the majority of SMR systems, authorized to provide interconnected service typically offer only extremely limited interconnection capability¹⁵ (unlike cellular and paging systems, in which all mobile and paging units must have access to the Public Switched Telephone Network ("PTSN")). An estimated 90% of units on analog SMR systems are not interconnected and thus, are not "CMRS units." To the extent that units on a particular system do not have interconnect capability, the service they receive cannot be classified as CMRS. Such units, therefore, should not be included in the calculation of CMRS regulatory fee obligations.

III. Conclusion

7. Accordingly, AMTA urges the Commission to reconsider its determination on the basis by which SMR licensees must calculate CMRS regulatory fees. AMTA respectfully requests that the Commission find that only interconnected units need be considered in determining the applicable CMRS regulatory fee for SMRs.

¹⁴ 47 C.F.R. §§ 90.601, *et. seq.*

¹⁵ According to the 1997 AMTA/Strategic Group SMR Industry Survey, the proportion of interconnected units in the SMR industry is only 24 percent of the total mobile units in service, including digital units placed into service by wider area licensees. The State of SMR & Digital Mobile Radio; 1997. The Strategic Group at 144, § 9.1.2.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 11th day of August, 1997, directed to be hand carried, a copy of the foregoing Petition for Reconsideration to the following:

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Dan Pythyon, Acting Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Gerald Vaughn, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

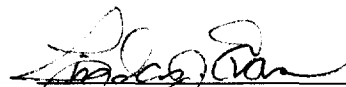
Rosalind K. Allen, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Karen Gulick, Associate Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

David Furth, Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2100 M Street, N.W., 7th Floor, Room 24
Washington, D.C. 20554

Sandra Danner, Deputy Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2100 M Street, N.W., 7th Floor
Washington, D.C. 20554

Ramona Melson, Chief
Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2100 M Street, N.W., 7th Floor, Room 101A
Washington, D.C. 20554



Linda J. Evans